

CITY OF BEAVERTON, OREGON



REQUEST FOR PROPOSAL FOR ANNUAL AUDIT SERVICES

DATE & TIME DUE: FEBRUARY 23, 2006 @ 4:00 P.M.

Mayor
Rob Drake

City Councilors

Cathy Stanton

Catherine Arnold

Betty Bode

Fred Ruby

Dennis Doyle

SUBMIT PROPOSAL TO:

City of Beaverton
Purchasing Division
4755 SW Griffith Drive
Beaverton, OR 97005
503-526-2228

LEGAL ADVERTISEMENT

CITY OF BEAVERTON REQUEST FOR PROPOSALS ANNUAL AUDIT SERVICES

The City of Beaverton is requesting proposals from qualified certified public accounting firms for the purpose of providing an annual audit.

Sealed proposals will be received until 4:00 PM on February 23, 2006, in the Finance Department at 4755 SW Griffith Dr., Beaverton, Oregon 97076. There will be no formal opening. Facsimile proposals will not be accepted. Proposals will not be accepted after the stated opening date and time. Late proposals will be returned to the vendor unopened.

Solicitation documents may be downloaded from www.beavertonoregon.gov or may be obtained at the address listed above or by calling the Bid Line at 503-526-2228.

All questions concerning the proposals or scope of work should be directed to Patrick O'Claire, Finance Director, telephone 503-526-2241.

Proposers are required to certify non-discrimination in employment practices, and identify resident status as defined in ORS 279A.120(1). Pre-qualification of proposer is not required. All proposers are required to comply with the provisions of Oregon Revised Statutes and Beaverton's Contract Review Board Policy.

The City of Beaverton reserves the right (1) to reject any or all proposal not in compliance with public bidding procedures, 2) to postpone award of the contract for a period not to exceed sixty (60) days from date of proposal opening, (3) to waive informalities in the proposals, and (4) to select the proposal which appears to be in the best interest of the City.

Terry L. Muralt, CPPB
Purchasing Agent

PUBLISHED: Daily Journal of Commerce
DATE: January 24, 2006

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INSTRUCTIONS FOR OBTAINING SOLICITATION DOCUMENTS AND ADDENDUMS FROM CITY OF BEAVERTON WEB SITE

TO: All Interested Parties

FROM: City of Beaverton, Purchasing Office

The city of Beaverton offers certain solicitation documents for downloading from the city's Web site. If you choose to download the solicitation document, the city requires each prospective bidder or proposer downloading these documents to follow the specific requirements detailed below. If the potential bidder or proposer does not follow these requirements they risk the possibility of not receiving a complete solicitation packet and may be deemed a non-responsive bidder.

Please note that the solicitation available for download is the original document released to the public.

Bidders should also "Register" on the City's Web site in order to receive e-mail notification of "Addendums" issued for a specific bid document. To receive automatic e-mail notification of Addendums, please go to the Bid Registration System at www.beavertonoregon.gov/bids. This site will allow you to register and then subscribe to the specific bid or proposal that you are downloading. Once you have subscribed for a specific bid or proposal you will receive an e-mail notification of any addendums issued for that specific bid. Upon receipt of the e-mail notification, bidders are responsible to download the document from the "Current Bid & Proposal Opportunities" site www.beavertonoregon.gov/departments/finance/finance_bids.html.

ANNUAL AUDIT SERVICES

SCOPE OF WORK

You are invited to submit a proposal to perform the annual audit of the City of Beaverton, Oregon, a municipal corporation of the State of Oregon. The contract is for one year and may be renewed yearly for four (4) additional one-year periods at the City's option. Proposals are solicited from all qualified interested certified public accounting firms who desire to provide this service.

PROPOSAL INSTRUCTIONS

1. Proposed Timelines:

January 24, 2006	Advertisement and Release of Proposals
February 23, 2006 @ 4:00 PM	Deadline for Submission of Proposals
March 6 – 8, 2006	Interviews (if necessary)
March 27 – 31, 2006	Review by Audit Committee
April 10, 2006	Award of Contract by Contract Review Board
Interim Work in Mid June	Commencement of Services

NOTE: *The City reserves the right to modify this schedule at the City's discretion. Proper notification of changes will be made to all interested parties.*

2. Submitted sealed proposals must contain **two (2) printed copies** of the proposal. Proposals shall contain two separate packets. The first packet shall be clearly marked on the outside "Technical Proposal", and the second packet shall be clearly marked on the outside "Fee Proposal". In addition one electronic file of the proposal shall be sent to Terry Murlat at the email address of tmurlat@ci.beaverton.or.us

Proposals must be signed and submitted no later than **4:00 PM on February 23, 2006**, to the address below. Proposals must be submitted in a sealed envelope and designated with the proposal title. To assure that your proposal receives priority treatment, please mark as follows.

Annual Audit Services – February 23, 2006 @ 4:00 PM
City of Beaverton
Terry Murlat, Purchasing Agent
4755 SW Griffith Dr.
Beaverton, OR 97076

PROPOSERS SHALL PUT THEIR NAME, ADDRESS ON OUTSIDE OF ENVELOPE.

It is the proposer's responsibility to ensure that proposals are received on or until the stated closing time. The City shall not be responsible for the proper identification and handling of any proposals submitted incorrectly. Late proposals, late modification or late withdrawals shall not be accepted after the stated bid opening date and time and shall be returned unopened. Facsimile proposals shall not be accepted.

3. **Submission and Signing of Proposals:**
The submission of a proposal and signing Appendix C "Signature Page" shall indicate the intention of the firm to adhere to the provisions described in this RFP.
4. **Cost of Preparing a Proposal:**
The RFP does not commit the City to paying any costs incurred by Proposer in the submission or presentation of a proposal, or in making the necessary studies for the preparation thereof.
5. **Interpretations and Addenda:**
All questions regarding this project proposal shall be directed to Patrick O'Claire, Finance Director, phone 503-526-2241. If necessary, interpretations or clarifications in response to such questions will be made by issuance of an "Addendum" to all prospective Proposers within a reasonable time prior to proposal closing, but in no case less than 72 hours before the proposal closing. If an addendum is necessary after that time, the City, at its discretion, can extend the closing date.

Bidders are responsible for checking for Addendums on the City's Website. Bidders should visit the City's website in order to "Register" to receive email notification of any "Addendums" issued for this specific bid document. Upon receipt of the email notification bidders are responsible to download the Addendum document from the "Current Bid & Proposal Opportunities" site www.beavertonoregon.gov/bids.

Any Addendum issued, as a result of any change in the RFP, must be acknowledged on the Appendix C "Signature Page" with proposal.

Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

All other questions should be directed to Terry Muralt, Purchasing Agent 503-526-2229.

6. **Business License/Federal ID Required:**
A City of Beaverton Business License is required. Chapter 7.01.020 of the Beaverton City Code states no person shall do business within the City without a current, valid City License. No contracts shall be signed prior to the obtaining of the City of Beaverton Business License.

Upon award of proposal, contractor shall complete a W-9 form for the City.
7. **Contract Administrator:**
The Contract Administrator will be Patrick O'Claire, phone 503-526-2241 or email po'claire@ci.beaverton.or.us.
8. **Proposal Validity Period:**
Each proposal shall be irrevocable for a period of sixty (60) days from the proposal opening date.
9. **Form of Contract:**
A Personal Service contract will be entered into between the City of Beaverton and the firm recommended by the committee and awarded by the City Council. The City's standard personal service contract is attached and included as part of this request for proposal. The contract will incorporate the terms and conditions from this RFP document and the submitted proposal. Any changes to the personal service contract language must be requested and resolved as part of this process or as a condition attached to the proposal or their exceptions will be deemed waived. The City is hereby expressly authorized to engage in serial negotiation of the excepted contract terms pursuant to BPC 47-0262(C) (2) (a) (iii).

10. Term of Contract:
The initial term of the contract shall be one (1) year with four (4) additional one-year options to extend. The maximum duration of the contract may not exceed five (5) years. A request for new proposals will be made after the fifth year.
11. Availability of Funds:
City has sufficient funds currently available and authorized for expenditure to finance costs of this Contract within City's current fiscal period; provided, however, that continuation or extension of the Contract after the end of the fiscal period in which this Contract is written is contingent upon a new appropriation for each succeeding fiscal period. If sufficient funds are not provided in future City Council-approved budgets of City (or from applicable federal, state, or other sources) to permit City in the exercise of its reasonable administrative discretion to continue this Contract, or if City abolishes the program for which benefit this Contract was executed, City may terminate this Contract without further liability by giving Contractor not less than 30 days' notice. In determining the availability of funds, City may use the annual budget adopted for it by its City Council.
12. Intergovernmental Permissive Cooperative Procurements:
Other Governmental Agencies may utilize this contract pursuant to ORS 279A.215 and City of Beaverton procurement rules. The Bidder has the right to partially or totally exclude any or all other public agencies from use of this contract. Any limitations must be clearly submitted with the response to this solicitation. Notwithstanding any limitations or exclusions, it shall be assumed that the Bidder will extend said contract to all other public agencies during the life of this contract.
13. Non-Collusion
Offeror certifies that this proposal had been arrived at independently and has been submitted without collusion designed to limit independent bidding or competition.
14. Public Records:
All proposal material submitted by proposer shall become the property of the city and a public record. During the evaluation and selection process, city shall treat proposal materials as exempt from public inspection. After the selection process is completed and notice of intent to award a contract has issued, city shall treat proposal materials as open to public inspection, unless exempt from public inspection by provision of applicable state or federal law. Information within a proposal that proposer considers a trade secret should be segregated and clearly identified as such. City shall treat such segregated and clearly identified trade secret information as exempt from public inspection at all times, including after notice of intent to award a contract has issued, to the extent permitted in the Oregon Public Records Law (ORS 192.410 to 192.505).

GENERAL REQUIREMENTS

The following is the description of the general requirements desired by the City:

1. The audit period for the first year shall cover the fiscal year July 1, 2005 to June 30, 2006.
2. The audit shall cover all funds of the City of Beaverton. Enclosed for your use in preparing the audit proposal is the City's Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2005.
3. The proposal shall contain provisions that if there are circumstances disclosed by the audit which indicate that more intensive and detailed examination is required in addition to that which would be sufficient under normal circumstances, the firm shall provide in writing all pertinent facts relative to the extraordinary circumstances together with the firm's estimate of the additional services to the City. Any fees relating to such extensions of examination procedures are to be considered as additional fees subject to negotiation and are not included within the scope of services to be performed under the original contract.
4. To meet the requirements of this request for proposal, the audit shall be performed in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, the provisions of the U.S. Office of Management and Budget (OMB) Circular A-133, Audits of State and Local Governments, and the requirements of the Minimum Standards for Audits for Oregon Municipal Corporations.

The audit shall also be in compliance with all other applicable federal, state and local laws and regulations.

5. The audit firm will conduct a preliminary audit exit conference for the City's management and conduct a final audit exit conference for the City's Audit Committee.
6. The City of Beaverton is an entitlement city and receives Community Development Block Grant (CDBG) funding. In addition the City has several other federal grants that will exceed the \$500,000 threshold; thereby requiring an annual A-133 report. The City estimates that expenditures under the CDBG program for the fiscal year ending June 30, 2006 will be approximately \$1.4 million.
7. The firm shall provide a separate Management Letter addressing the observations, opinions, and comments concerning internal controls and operational efficiencies and recommendations for improvements if they are noted during the course of the audit. Such observations, opinions or comments are not to be construed as special or additional studies.
8. GFOA Certificate of Achievement. The City has been awarded the Government Finance Officer's Associations Certificate of Achievement for Excellence in Financial Reporting since 1979.

It is the City's intent to annually submit its CAFR to the GFOA Certificate program and to continue to receive the award. The City may require minor technical assistance from the audit firm in regard to presentation or disclosure issues relating to the GFOA program.

TECHNICAL PROPOSAL

Your technical proposal should address the specific information as it relates to your local office, and must contain the following:

1. The partners and managers who will be assigned to the City of Beaverton engagement. Provide resumes and indicate their experience in auditing government jurisdictions.
2. The staffing level that will be assigned to the City of Beaverton audit fieldwork. Provide resumes outlining their experience in local governmental engagements, grants, federal grant compliance, utility auditing, and self-insurance auditing.
3. Your estimate of the number of hours the partner and manager will spend on site.
4. Name the Oregon local government jurisdictions that you presently audit with annual budgets in excess of \$50 million.
5. Submit a sample management report that you have recently issued covering an audit of an Oregon municipality.
6. Describe your firm's experience in conducting the audit on Federal Grant Compliance as prescribed by OMB Circular A-133. Submit a sample Federal Grant Compliance report that you have recently issued.
7. Provide a brief description of the audit procedures to be followed, presented in a form, which will best aid the City in evaluating your proposal.
8. Provide a proposed audit work plan that will meet a Comprehensive Annual Financial Report publication date during the last week of November.
9. Provide a copy of your firm's most recent external Quality Control Review Report.
10. Indicate whether your firm will provide year-round advice to the City's Finance Department on matters relating to budgeting, accounting and auditing issues, as part of the proposal's maximum fee.

FEE PROPOSAL

Your fee proposal should be based on City Staff providing work papers as explained in Appendix B. A draft of the financial statements will be provided on or about mid-October of each year. Your fee proposal should contain the following information:

1. The rate per hour for each staff member to be assigned to the City of Beaverton engagement.
2. Your estimate of the minimum number of hours that each of the staff identified in Item Numbers 1 & 2 of the Technical Proposal will spend on the entire City engagement.
3. The maximum fee/cost that your firm will charge the City for the entire audit. The fee proposal should include an estimate of the maximum fee for the second, third, fourth and fifth years, July 1, 2006 through June 30, 2007; July 1, 2007 through June 30, 2008; July 1, 2008 through June 30, 2009; and July 1, 2009 through June 30, 2010.
4. Separately itemize the portion of your maximum fee that is attributable to conducting the Federal Grant Compliance report.

5. Please indicate whether your maximum fee includes out of pocket expenses. If not, please itemize the out-of-pocket expenses that will be billed and the corresponding maximum amount.
6. An optional fee quote that would include preparing the annual CAFR.

Compensation for your services shall be on a time-billing basis upon receipt of your monthly statements. The periodic billing will include the name of the staff and title, hours worked and the hourly rate totaling the labor amount billed, and the itemized out of pocket expenses.

EVALUATION OF PROPOSALS

It is the intent of the City to make a selection from the proposals submitted. However, more information may be requested if two or more proposals seem to be equally qualified.

Proposals will be evaluated using "Appendix A" to ascertain which proposal best meets the needs of the City of Beaverton. Proposals may be so similar in quality that oral interviews and presentations may be arranged to assist the City in making the final selection. Evaluation considerations will include the following:

1. Responsiveness of the proposal to the audit requirements.
2. Technical experience of the firm.
3. Experience of the audit team.
4. Maximum Fee. Although a significant factor, the maximum fee may not be the dominant factor in determining the final decision. The City reserves the right to elect to negotiate the audit fee of any of the top three firms rated highest through the evaluation process.

While the total score will be a significant factor, the City reserves the right to make the final selection solely by exercise of its own discretion and notwithstanding respective total scores.

City staff will present an evaluation of the proposals to the Audit Committee. Only the firms within the highest three "Technical Proposal" scores will have their fee/cost proposal opened and evaluated. The Audit Committee will then forward their recommendation to the City Council's Contract Review Board for contract award. The city reserves the right to negotiate costs & fees with any of the top 3 firms.

The City reserves the right to:

- To reject any or all proposals not in compliance with all public procedures and requirements;
- To reject any proposal not meeting the specifications set forth herein;
- To waive any or all irregularities in proposals submitted;
- To reject all proposals;
- To request references and other data to determine responsiveness.
- Interpret insistence upon a contract modification as a refusal to honor the original proposal and re-institute the evaluation process.
- To select the proposal which appears to be in the best interest of the City.

AWARD RECOMMENDATION

The Notice of Intent to Award shall be the City's recommendation contained in the agenda item published in the City's Council Agenda. Agendas for Council meetings are posted on the City website at: www.beavertonoregon.gov. The decision by the Contract Review Board to award the contract shall constitute the final decision of the City to award the Contract.

APPENDIX "A"

City of Beaverton
Request for Proposal - Annual Audit Services
Proposal Evaluation

The evaluation formula and the values assigned to the criteria areas follows:

FACTOR	POINT RANGE
1. Prior auditing experience of similar-sized Oregon local governments (0-30)	
a) Auditing local governments including school districts and non-profits	0 - 10
b) Auditing cities	0 - 20
2. Qualifications of the staff assigned to the audit. Education, position in firm and years and types of experience will be considered. This will be determined from the resumes submitted. (0-30)	
a) Qualifications of audit team	0 - 20
b) Overall supervision to be exercised over audit team by firm's management	0 - 10
3. Firm's understanding of work to be performed. This will be determined by the approach to the audit as presented in the audit work plan. (0-30)	0 - 30
Subtotal Technical points	<u>0 - 90</u>
4. Points for cost of the audit * (0-10)	<u>0 - 10</u>
Total Maximum points	<u>100</u>

* The firm submitting the lowest fee proposal, among the ones opened, will receive a score of 10. The other two fee proposals will have their score reduced by one point for each \$2,000 or fraction thereof that their fee is above the lowest fee proposal. Although a significant factor, cost may not be a dominant factor. The City may elect to negotiate the fee with any firm within the top 3 ranking of the "technical proposal".

APPENDIX “B”

City of Beaverton Request for Proposal - Annual Audit Services Support and Services Provided by City Staff

The following work papers are prepared by the City of Beaverton Finance Staff:

AUDIT WORK PAPERS

Trial Balances and Other Financial Statements

- Trial balances with final budget, and actual activity for each budgetary fund. Includes balance sheet and revenue and expenditure accounts.
- Adjusting journal entries.
- GAAP conversion trial balances for funds with GAAP journal entries.
- Cash flow statements and support for each applicable fund.
- Completed draft of CAFR including all statements, schedules and note disclosures.
- Supporting lead schedules and reports for GASB 34 reporting.

Cash & Investments

- Bank reconciliation
- Outstanding checks lists
- Deposits in transit
- Schedule of investments by fund
- Schedule of investment earnings

Balance Sheet Analysis - Assets

- Accounts receivable lead schedule
- Capital Assets - All Funds
- Capital Assets – Disposals, Additions, Transfers
- Depreciation Schedule – All Funds
- Accrued Interest
- Property Tax Schedule and Accruals

Balance Sheet Analysis - Liabilities

- Accounts payable lead schedule
- Retainage payable - all funds
- Accrued paid time off (PTO) summary
- Accrued paid time off (PTO) supporting detail
- Long-term liabilities support

Other

- Property tax revenue/deferred revenue lead schedule
- Property tax transactions

- Inter-fund transfers lead schedule (budgetary and GAAP)
- Due to / due from lead schedule (budgetary and GAAP)
- New bond issues or refunding detail
- Response to GFOA comments

Grants

Summary Schedule - Grant Activity and Ending Grant Receivable Balance

- Grant billings at June 30
- Schedule of Expenditures of Federal Financial Assistance
- All grant agreements and amendments

Other Reports

- Budget adjustments and Supplemental Budgets
- Budget Hearing Notices
- Budget Documents

APPENDIX "C"

SIGNATURE PAGE

(Sign and submit with proposal)

The undersigned proposes to perform all work as listed in the Specification section, for the price(s) stated; and that all articles supplied under any resultant contract will conform to the specifications herein,

The undersigned agrees to be bound by all applicable laws and regulations, the accompanying specifications and by City policies and regulations.

The undersigned, by submitting a proposal, represents that:

- A) The Proposer has read and understands the specifications.
- B) Failure to comply with the specifications or any terms of the Request for Proposal may disqualify the Proposer as being non-responsive.
- C) The Contractor agrees not to discriminate against any client, employee or applicant for employment or for services, because of race, color, religion, sex, national origin, handicap or age with regard to, but not limited to, the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; selection for training; rendition of services.

The undersigned certifies that the proposal has been arrived at independently and has been submitted without any collusion designed to limit competition.

The undersigned certifies that all addenda to the specifications has been received and duly considered and that all costs associated with all addenda have been included in this proposal:

Addendum No(s)._____ Acknowledged.

We therefore offer and make this proposal to furnish services at the price(s) indicated herein in fulfillment of the attached requirements and specifications of the City.

Name of firm: _____

Address: _____

Telephone Number _____ Fax Number _____

by: _____ Date: _____

(Signature of Authorized Official. If partnership, signature of one partner.)

Typed Name/Title: _____

If corporation, attest: _____

(Corporate officer)

_____ Corporation _____ Partnership _____ Individual

Federal ID No. _____.

APPENDIX "D"

CITY OF BEAVERTON PERSONAL SERVICES CONTRACT

PROVIDE ANNUAL AUDIT SERVICES

THIS CONTRACT FOR PERSONAL OR PROFESSIONAL SERVICES ("Contract") is entered into between the City of Beaverton, Oregon, located at 4755 SW Griffith Drive, P.O. Box 4755, Beaverton, Oregon 97076-4755 ("City") and _____ located at _____ ("Contractor"). The City's primary supervisor for this Contract ("Contract Administrator") is Patrick O'Claire, Finance Director.

THE PARTIES HEREBY AGREE THAT:

1. EFFECTIVE DATE; DURATION. This Contract shall become effective on the date this Contract has been signed by every party hereto and, approved by legal counsel for the City. Unless terminated or extended, this Contract shall expire when City accepts Contractor's completed performance or on _____, 20____ whichever date occurs first.

2. STATEMENT OF WORK. In accordance with the terms and conditions of this Contract, Contractor shall perform the services as scheduled ("Work") and as set forth in Contractor's proposal dated _____, attached hereto as Exhibit "A" and incorporated herein by this reference; or

3. CONTRACT DOCUMENTS. In the event of a conflict between or among the terms of this instrument, any proposal and/or request for proposals, the following order of precedence shall prevail: (a) this instrument, (b) attached exhibits; (c) the request for proposal, (d) the proposal. Nothing herein shall be considered as an acceptance of the terms of a proposal if the terms of the proposal conflict or are otherwise incompatible with the express terms contained herein or in the City's request for proposal.

☒ City's Request for Proposal dated _____, is attached hereto as Exhibit "B" and incorporated herein by this reference. (*Attach RFP if Contract results from RFP solicitation.*)

4. CONSIDERATION. City shall pay Contractor ☒ the sum of \$ _____ or ☐ at the hourly rate of \$ _____ for satisfactory accomplishment of the Work required by this Contract. The **MAXIMUM, NOT-TO-EXCEED AMOUNT** of compensation payable to Contractor under this Contract, which includes any allowable expenses or reimbursement, is \$ _____.

5. BILLING AND PAYMENT SCHEDULE. At least thirty (30) days prior to due date of payment, Contractor shall prepare and submit to **THE CITY OF BEAVERTON, ATTENTION: FINANCE DEPARTMENT, PO BOX 4755, BEAVERTON, OREGON 97076**, an invoice of services rendered. Payment shall be made upon Contract Administrator's approval and acceptance of Contractor's completed Work described herein, whereupon Contract Administrator shall submit a payment request to City's Finance Department. If this Contract specifies an end product, an amount up to 10 percent of the total sum of money to be paid for the satisfactory accomplishment of the Work may be withheld until all required Work is completed and accepted. If charges are made for services performed and those charges are to be paid from grant funds, the services shall relate directly to the grant from which the funds are expended. Interim payments to Contractor for partial completion of tasks or services may be made only upon prior written authorization of City. When made, interim payment shall release City from any further obligation for payment to Contractor for Work performed or expenses incurred as of the date of the invoice of services rendered.

6. AVAILABILITY OF FUNDS. City has sufficient funds currently available and authorized for expenditure to finance costs of this Contract within City's current fiscal period; provided, however, that continuation or extension of the Contract after the end of the fiscal period in which this Contract is written is contingent upon a new appropriation for each succeeding fiscal period. If sufficient funds are not provided in future City Council-approved budgets of City (or from applicable federal, state, or other sources) to permit City in the exercise of its reasonable administrative discretion to continue this Contract, or if City abolishes the program for which benefit this Contract was executed, City may terminate this Contract without further liability by giving Contractor not less than 30 days' notice. In determining the availability of funds, City may use the annual budget adopted for it by its City Council.

7. ASSIGNMENT AND SUBCONTRACTORS. Contractor shall not assign, sell, subcontract, dispose of or transfer rights or delegate duties hereunder, either in whole or in part, without the City's prior written consent; provided, however, that money due to Contractor may be assigned, if the City is given written notice thereof, but any assignment of money shall be subject to all proper setoffs and withholdings in favor of the City. In no instance shall such consent relieve Contractor of any obligations hereunder. Any assignee, transferee or subcontractor shall be considered the agent of the Contractor and be bound to abide by all provisions of this Contract. Contractor, and its surety, if any, shall remain liable to City for complete performance of this Contract as if no such assignment, sale, subcontracting, disposal, transfer or delegation had occurred, unless City otherwise agrees in writing. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, if any.

8. TERMINATION. The parties may effect termination of this Contract in the manners indicated:

- a. **Parties' Right to Terminate for Convenience.** This Contract may be terminated at any time by mutual written consent of the parties.
- b. **City's Right to Terminate for Convenience.** City may, at its sole discretion, terminate this Contract, in whole or in part, upon 30 days notice to Contractor.
- c. **City's Right to Terminate for Cause.** City may terminate this Contract, in whole or in part, immediately upon notice to Contractor, or at such later date as City may establish in such notice, upon the occurrence of any of the following events:
 - (i) City fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Contractor's Work;
 - (ii) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Contract is prohibited or City is prohibited from paying for such work from the planned funding source;
 - (iii) Contractor no longer holds any license or certificate that is required to perform the work; or
 - (iv) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of City's notice, or such longer period as City may specify in such notice.
- d. **Consultant's Right to Terminate for Cause.** Contractor may terminate this Contract upon 30 days' notice to City if City fails to pay Contractor pursuant to the terms of this Contract and City fails to cure within 30 business days after receipt of Contractor's notice, or such longer period of cure as Contractor may specify in such notice.
- e. **Remedies.** (i) In the event of termination pursuant to subsections a, b, c(i), c(ii) or d, of this Section, Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by City, less previous amounts paid and any claim(s) which City has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor shall pay any excess to City upon demand. (ii) In the event of termination pursuant to subsection c(iii) or c(iv) of this Section, City shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under subsection c(iii) or c(iv) of this Section, the rights and obligations

of the parties shall be the same as if the Contract was terminated pursuant to subsection b of this Section.

- f. **Consultant's Tender upon Termination.** Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless City expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to City all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed. Upon City's request, Contractor shall promptly surrender to anyone City designates, all documents, research or objects or other tangible things needed to complete the work.

9. FORCE MAJEURE. Neither party shall be held responsible for delay or default caused by war, insurrection, acts of terrorism, strikes, lockouts, labor disputes, riots, terrorist acts or other acts of political sabotage, volcanoes, floods earthquakes, fires, acts of God, acts of the public enemy, epidemic, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priorities, severe weather, or any other uncontrollable or unforeseeable act or circumstance beyond a party's reasonable control and without the fault or negligence of the party. The affected party, however, shall make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under this Contract. In the event of such delay, the party delayed shall give written notice of the delay and the reason therefor to the other party within 30 days after the delayed party learns of the delaying event. An extension of time for any such cause shall be for the period of duration of the cause. Delays under this paragraph shall not be the basis for additional compensation payable to the Contractor.

10. MODIFICATION. Any modification of the provisions of this Contract shall not be enforceable unless first reduced to writing and signed by both parties. A modification is a written document, contemporaneously executed by City and Contractor, which increases or decreases the cost to City over the agreed sum or changes or modifies the Statement of Services or Delivery Schedule. Any such modification shall be effective only in the specific instance and for the specific purpose identified in the modification. In the event that Contractor receives any communication of whatsoever nature from City that Contractor contends gives rise to any modification of this Contract, Contractor shall, within 15 calendar days after receipt, make a written request for modification to City. Contractor's failure to submit such written request for modification in a timely manner is a basis upon which City may refuse to treat said communication as a modification. In connection with any modification to the Contract affecting any change in price, Contractor shall submit a complete breakdown of labor, material, equipment and other costs. If Contractor incurs additional costs or devotes additional time on project tasks which were reasonably expected as part of the original Contract or any mutually approved modifications, then City shall be responsible for payment of only those costs for which it has agreed to pay.

11. ACCESS TO RECORDS. Contractor shall maintain all books, documents, papers and records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. City, state and federal government, and their duly authorized representatives, shall have access to Contractor's books, documents, papers, plans, writings and records that are directly pertinent to this Contract for the purpose of performing examinations and audits and making excerpts and transcripts. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of three years from the date of Contract expiration, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later. Contractor is responsible for any audit discrepancies involving deviation from the terms of this Contract and for any commitments or expenditures in excess of amounts authorized by City. The state and federal governments and their duly authorized representatives are intended beneficiaries of the terms of this provision.

12. COMPLIANCE WITH APPLICABLE LAWS. Contractor shall comply with all federal, state and local laws, ordinances, rules, regulations and executive orders applicable to the Work to be performed under this Contract. Failure or neglect on the part of Contractor to comply with any or all such laws, ordinances, rules or regulations

shall not relieve Contractor of these obligations or the requirements of this Contract. Without limiting the foregoing, Contractor shall comply with all federal, state and local civil rights and rehabilitation laws prohibiting discrimination because of race, sex, national origin, religion, age or disability, and shall comply with all applicable provisions of ORS 279C.500 through 279C.565. The provisions of ORS 279C.505, ORS 279C.510, ORS 279C.515, ORS 279C.520 and ORS 279C.530 are hereby incorporated herein by this reference and the applicable terms therein shall be binding upon Contractor. The parties shall comply with any state or federal law or regulation specific to the funding source that supports this Contract.

13. INDEPENDENT CONTRACTOR; RESPONSIBILITY FOR TAXES & WITHHOLDING. The Work to be rendered under this Contract is that of an Independent Contractor. Contractor is not to be considered an agent or employee of City for any purpose. Contractor shall be solely and entirely responsible for its acts and for the acts of its agents or employees during the performance of this Contract. As used herein, "Independent Contractor" means that:

- a. Contractor is free from direction and control over the means and manner of providing labor or services, subject only to City's right to specify the desired results.
- b. Contractor is responsible for obtaining all required business registrations or professional occupational licenses.
- c. Contractor furnishes the tools or equipment necessary to perform the contracted labor or services.
- d. Contractor has the authority to hire and fire Contractor's employees.
- e. Contractor is registered under ORS chapter 701 to provide labor or services for which such registration is required.
- f. For labor and services performed as an Independent Contractor in the previous year, Contractor has either filed federal and state income tax returns in the name of Contractor's business or, in the alternative; Contractor has filed a Schedule C tax form as part of Contractor's personal income tax return.
- g. Contractor represents to the public that the labor or services described herein are to be provided by an independently established business.
- h. Payment to the Contractor is made upon completion or periodic completion of the performance required herein, or is made based on a periodic retainer.

Neither Contractor nor any of Contractor's agents or employees is entitled to any of the benefits (including, but not limited to, social security, workers' compensation and unemployment insurance benefits) that City provides its employees. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract. Unless Consultant is subject to backup withholding, City will not withhold from such compensation or payments any amount to cover Contractor's federal or state tax obligations.

14. REPRESENTATIONS AND WARRANTIES; STANDARD OF CARE. Contractor represents and warrants to City that:

- a. Contractor has the power and authority to enter into and perform this Contract;
- b. When executed and delivered, this Contract shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
- c. If Contractor provides personal services under this Contract, the Work under this Contract shall be performed in a good and workmanlike manner;
- d. If Contractor provides professional services under this Contract, the Work under this Contract shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care, skill and diligence ordinarily exercised by members of the profession currently practicing under similar conditions; and
- e. Contractor shall, at all times during the term of this Contract, be duly licensed to perform the Work, and if there is no licensing requirement for the profession or Work, be duly qualified and competent.

The warranties set forth in this Section are in addition to, and not in lieu of, any other warranties provided.

15. OWNERSHIP OF WORK PRODUCT. All work products or any form of property originated or prepared by Contractor that results from this Contract are the exclusive property of City. Contractor understands and agrees that the work to be performed for City under this Contract shall be considered "work for hire" and City shall be deemed the exclusive owner of all rights to copyright the work once performed no matter when it comes into City's physical possession. Reuse of work product by City or others for purposes outside the scope of the Statement of Work of this Contract shall be without liability to Contractor.

16. INDEMNITY. With regard to the Contractor's performance in connection with or incidental to the Work, but excluding its performance of professional services and the indemnification and hold harmless aspects thereto as set forth below in this Section, the Contractor shall defend, indemnify, protect and hold the City, its officials, agents, employees and volunteers harmless from and against any and all claims, suits, actions, losses, costs or judgments of any nature for damages or injuries to any person or property, including injury to the Contractor's or its subcontractors' employees, agents or officers, which arise from or are connected with or are caused or claimed to be caused by the negligent, reckless or willful acts or omissions of the Contractor and its subcontractors and their agents, officers or employees, in performing Work herein, and all expenses of investigating and defending against same, including attorney fees and costs at trial and on appeal; provided, however, that the Contractor's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its officials, agents, employees or volunteers.

With regard to the Contractor's performance of professional services, Contractor shall defend, indemnify and hold harmless the City, its officials, agents, employees and volunteers from and against any and all claims, costs, suits, actions, losses, expenses and damages, including attorney's fees and costs at trial and on appeal, arising from the willful misconduct or negligent acts, errors or omissions of the Consultant and/or its subconsultants associated with the Work.

17. INSURANCE. Contractor, at Contractor's own expense, shall procure and maintain in full force and effect for the duration of Contractor's Work under this Contract the types and coverage amounts of insurance conforming to these minimum requirements:

**WORKERS' COMPENSATION INSURANCE
AND EMPLOYER LIABILITY INSURANCE**

☒ **Required;** ☐ **Not Required.**

Workers' Compensation Insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work in Oregon, unless existence of extraterritorial coverage is established pursuant to ORS 656.126(3). All Contractors and subcontractors required to procure and maintain Workers' Compensation Insurance shall also procure and maintain in full force and effect for the duration of Contractor's or subcontractor's Work under this Contract Employer Liability Insurance with a combined single limit, or the equivalent, of not less than \$500,000 each employee per accident for bodily injury by accident or disease.

Contractor shall require and ensure that each of its subcontractors who provide labor or services in connection with this Contract operates in compliance with ORS 656.017 by providing Oregon workers' compensation coverage for all their subject workers. Contractor shall require proof of such Workers' Compensation Insurance and Employer Liability Insurance by receiving and keeping on file a certificate of insurance from each subcontractor and anyone else directly employed by either the Contractor or subcontractor.

Workers' Compensation Insurance and Employer's Liability Insurance coverage is required under this Contract of all Contractors who are employers. If Contractor is legally exempt from any requirement to provide Workers' Compensation Insurance coverage for the Work to be performed under this Contract, Contractor hereby represents that Contractor understands and agrees that under ORS 656.006(13), an "employer" is any person who contracts to pay remuneration for and secures the right to direct and control the services of any person. Contractor

understands and agrees that if Contractor is exempt from coverage under ORS 656.027 and engages individuals in performance of this Contract who are not exempt from coverage under ORS 656.027, then Contractor shall provide Workers' Compensation Insurance coverage for all such individuals. If the Contractor does not provide that insurance, Contractor may be deemed a non-complying employer for purposes of Oregon law and agrees to hold City harmless from and indemnify City against any and all claims for compensation benefits made against the Contractor as a non-complying employer. If Contractor is declaring Contractor exempt from any requirement to provide workers' compensation coverage, Contractor must initial here: _____; otherwise Contractor shall procure and maintain the required insurance.

COMMERCIAL GENERAL LIABILITY INSURANCE

☒ **Required;** ☐ **Not Required.**

General Liability Insurance with a combined single limit, or the equivalent, of not less than ☐ \$500,000; ☒ \$1,000,000; ☐ \$2,000,000; or ☐ \$5,000,000 covering, but not limited to, liability for personal injury and property damage. The policy shall be written on an occurrence basis on ISO Form CG 00 01, or its equivalent, and shall include blanket contractual liability coverage for the assumed liability under this Contract and broad form property damage coverage including completed operations. The City of Beaverton, and its officials, employees and agents shall be named as additional insureds under ISO Form CG 20 10 (Additional Insureds – Owners, Lessees or Consultants), or its equivalent, with respect to the Work to be provided under this Contract. The Commercial General Liability Insurance coverage required by this Contract is with respect only to the Work described in this Contract, and has no relationship to, or bearing upon, other projects of the insured. The insurance coverage is primary to any self-insurance program.

AUTOMOBILE LIABILITY INSURANCE

☒ **Required;** ☐ **Not Required.**

Automobile Liability Insurance with an each accident limit, or the equivalent, of not less than ☐ \$500,000, or ☒ \$1,000,000 covering, but not limited to, liability for bodily injury and property damage, together with coverage for "any auto," including owned, non-owned and hired autos used in connection with the performance of the Work. The policy shall be written on an occurrence basis on ISO Form CA 00 01, or its equivalent, including an omnibus insurance clause. The City of Beaverton, and its officials, employees and agents shall be named additional insureds under the policy if Contractor's Work entails transporting people for the City. The policy cannot be excess to a self-insurance program; any deductible cannot exceed \$5000. If Contractor is declaring Contractor excused from any requirement to provide Automobile Liability Insurance coverage because Contractor does not use an automobile in connection with Work under this Contract, Contractor may initial here: _____; otherwise Contractor shall procure and maintain the required insurance.

PROFESSIONAL LIABILITY INSURANCE

☒ **REQUIRED;** ☐ **NOT REQUIRED.**

Professional Liability Insurance with a combined single limit, or the equivalent, of not less than ☐ \$500,000; ☒ \$1,000,000; ☐ \$2,000,000; or ☐ \$5,000,000 per claim with a ☒ \$2,000,000 or ☐ \$5,000,000 annual aggregate limit, covering, but not limited to, liability for bodily injury, property damage and economic loss. Contractor shall be responsible for any deductible amounts. If Contractor proposes using subcontractors, in addition to any other requirements of this Contract, City may require subcontractors to provide professional liability insurance of similar type and coverage amount. Contractor, at Contractor's own expense, shall maintain the Professional Liability Insurance in full force for not less 24 months following completion of this Contract. The Professional Liability coverage required by this Contract is with respect only to the Work described in this Contract, and has no relationship to, or bearing upon, other projects of the insured. Coverage must be in effect prior to the commencement of the performance of this Contract. Contractor shall furnish proof of continuous "tail" coverage for 24 months after Contract completion.

CONSULTANT POLLUTION LIABILITY

☐ **REQUIRED;** ☒ **NOT REQUIRED.**

Contractor's Professional Liability Insurances shall be endorsed to provide liability coverage in an amount not less than ☐ \$1,000,000; ☐ \$2,000,000; or ☐ \$5,000,000 per claim limit, with a ☐ \$2,000,000 or ☐ \$5,000,000 annual aggregate limit, covering, but not limited to, liability for bodily injury, property damage and cleanup costs. In lieu of endorsement, the City may accept equivalent coverage under a separate insurance policy.

COMMERCIAL CRIME INSURANCE

☐ REQUIRED; ☒ NOT REQUIRED.

Commercial Crime Insurance not less than \$50,000 including, but not limited to, coverage for theft or loss of client property.

CONTRACTOR POLLUTION LIABILITY INSURANCE

☐ REQUIRED; ☒ NOT REQUIRED.

Contractor Pollution Liability Insurance in an amount not less than ☐ \$1,000,000; ☐ \$2,000,000; or ☐ \$5,000,000 per claim limit, with a ☐ \$2,000,000 or ☐ \$5,000,000 annual aggregate limit, covering, but not limited to, liability for bodily injury, property damage and cleanup costs.

WAIVER OF SUBROGATION

☐ REQUIRED; ☒ NOT REQUIRED.

If Waiver of Subrogation is required, Contractor hereby waives Contractor's right to recover from the City, and its officers, agents, employees and volunteers for any damages arising out of Work performed under this Contract and covered by insurance. Any Commercial General Liability Insurance policy and/or Automobile Liability Insurance policy required under this Contract shall be endorsed to provide for a waiver of underwriter's rights to subrogation as to additional insureds.

18. INSURANCE CERTIFICATION; OTHER INSURANCE REQUIREMENTS. Before Contractor commences Work under this Contract, Contractor shall furnish City, through its Risk Manager, with acceptable certificates evidencing the types, amounts and issuers of insurance coverage meeting the minimum requirements of this Contract. The certificate shall specify all of the parties who are Additional Insureds. If a certificate of insurance coverage is unavailable from a particular insurer, alternative proof of insurance coverage acceptable to City shall be arranged. Renewal certificates of insurance shall be furnished no later than 15 days before the expiration of the policy. Any deductibles or self-insured retentions must be stated on the certificate of insurance, which shall be sent to and approved by City's Risk Manager in advance to commencement of Work under this contract.

In all instances concerning all forms of insurance required by this Contract:

- a. The insurance shall be issued by a company authorized to do insurance business in the State of Oregon or by a non-admitted insurer subject to the Oregon Surplus Lines Law (ORS 735.400 to 735.495);
- b. Upon request, complete copies of insurance policies, trust agreements, etc. shall be provided to City;
- c. Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance amounts;
- d. Umbrella or Excess Liability Insurance may be used to achieve the above minimum liability limits, so long as policy is endorsed to state it is "As Broad as Primary Policy." If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlying Schedule from the Umbrella or Excess Liability Insurance policy may be required;
- e. Contractor shall provide City not less than 30 days written notice of Contractor's intent to cancel, terminate or make any material change affecting required insurance coverage;
- f. Until such time as the insurance is no longer required by the City, Contractor shall provide the City with renewal or replacement evidence of insurance no less than 30 days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the City and immediately replace such insurance with an insurer meeting the requirements

- g. Except for Professional Liability Insurance, the insurance shall be provided by a carrier with A.M. Best's Rating of A- or better and Financial Performance Rating of 7 or better. Contractor's Professional Liability Insurance policy shall be written by an insurer satisfactory to City and may be written on a claims made basis, provided Contractor, at Contractor's own expense, maintains the Professional Liability Insurance in full force for not less 24 months following completion of this Contract; and
- h. The insurance provided by Contractor and its subcontractors shall apply on a primary basis and be required to respond and pay prior to any other available coverage. Any insurance maintained by the City shall be excess of and shall not contribute with the insurance provided by Contractor and its subcontractors.

City reserves the right to review the types of coverages and limits of insurance required herein from time to time. In the event that City changes its insurance requirements after this Contract has been signed, City will provide notice to Contractor of the new requirements. Contractor shall promptly modify its coverage to comply with the new requirements and provide City with updated evidence of coverage. Contractor will be entitled to an adjustment in the Contract price for any increase in premium resulting from such changes, provided Contractor can establish with reasonable certainty that the increased premium was due to changes required by City. Premium savings from any changes shall be refunded to City.

19. LIMITATION OF LIABILITIES. Neither party shall be liable for (i) any indirect, incidental, consequential or special damages under the Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms; provided, however, this provision does not apply to liability arising under or relating to Section 8(e)(ii)(Termination) or Section 14 (Representations and Warranties; Standard of Care).

20. NOTICE. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or City at the address or number as identified herein above, or to such other addresses or numbers as either party from time to time may designate in writing. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against City, such facsimile transmission must be confirmed by telephone notice to the Contract Administrator. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

21. NO THIRD PARTY BENEFICIARIES. City and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

22. CONFLICT OF INTEREST. Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City employee has an interest, will or has received any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this Contract, except as specifically declared in writing.

23. HAZARD COMMUNICATION. Contractor shall notify City before using products containing hazardous chemicals to which City employees or patrons may be exposed. In accordance with the OR-OSHA Hazard Communication Rules in OAR chapter 437, division 155, Contractor shall provide City with a Material Safety Data Sheet for any goods provided under this Contract that may release, or otherwise result in exposure to a hazardous chemical under normal conditions of use (OAR 437-155-005(2), 437-155-025). In addition, Contractor must label, tag, or mark such goods.

24. DISCLOSURE OF SOCIAL SECURITY NUMBER. Contractor must provide Contractor's Social Security Number unless Contractor provides a federal tax ID number. This number is requested pursuant to BPC 47-0636 of the RFP for Annual Audit Services FY 2005-06

Beaverton Purchasing Code(Resolution 3809, as amended). Social Security numbers provided pursuant to this authority will be used for the administration of state, federal and local tax laws.

25. DISPUTE RESOLUTION. Any disputes under this Contract not resolved by the parties through direct communication shall be dealt with first by the aggrieved party giving the other party written notice of the dispute and, within 20 days after receipt of said notice, the receiving party submitting to the aggrieved party a written response. The notice and response shall include a statement of each party's position and a summary of the evidence and arguments supporting its position. Any disputes not resolved by this process shall be submitted to mediation before commencement of litigation.

The mediator shall be named by mutual agreement of the parties or by obtaining a list of five qualified persons from the parties and alternatively striking names. The mediator shall have the duty and responsibility to assist the parties in resolving all issues submitted for mediation. The parties shall cooperate and operate to resolve all matters in dispute with the assistance of the mediator. The parties shall share the mediator's fees and expenses equally, unless they agree otherwise. The mediation shall terminate by: (a) written agreement signed by the parties; (b) determination by the mediator that the parties are at an irresolvable impasse; or (c) two unexcused absences by either party from the mediation session. The mediator shall not participate in any claim or controversy arising out of this Contract and may not be called as a witness to testify in any proceeding involving the subject matter of mediation. ORS 36.100 to 36.245 shall apply to the entire process of mediation.

The mediation shall commence at a mutually acceptable time and place within sixty days of the date of the aggrieved party's notice. Mediation may continue as often and as long as thereafter as the mediator and the parties reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute. Should the mediation fail to settle such dispute within 60 days of the commencement of mediation, or if the party receiving said notice do not meet within sixty days of said notice, either party may terminate mediation. The parties shall share equally the costs of the mediator. Each party shall be responsible for its own costs of mediation.

26. SURVIVAL. Expiration shall not extinguish or prejudice City's right to enforce this Contract with respect to any breach of a Contractor warranty or any default or defect in Contractor performance that has not been cured. All representations, indemnifications, warranties and guarantees made in, required by or given by the Contractor in accordance with this Contract, as well as all continuing obligations indicated in the Contract, will survive final payment to the Contractor, completion of the Work and termination or completion of the Contract.

27. TIME IS OF THE ESSENCE. Time is of the essence under this Contract.

28. GOVERNING LAW. This Contract is entered into and is to be performed in Oregon and shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflict of laws, rules or doctrines. Any claim, action, suit, or proceeding between City and Contractor arising from or relating to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Washington County, Oregon, or, if the claim must be brought in a federal forum, the United States District Court for the District of Oregon. Contractor hereby consents to *in personam* jurisdiction of said courts.

29. CAPTIONS. The captions or headings in this Contract are for are for reference purposes only and shall not affect in any way the meaning or interpretation of this Contract.

30. COUNTERPARTS. This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

31. MERGER. This Contract (including, to the extent provided herein, any attached exhibits) constitutes the entire and integrated agreement between the parties and supersedes all prior contracts, negotiations,

representations or agreements, either written or oral. There are no understandings, agreements, representations, oral or written, not specified herein regarding this agreement.

32. WAIVER. City's failure to enforce a provision of this Contract shall not constitute a continuing waiver, shall not constitute a relinquishment of City's right to performance in the future and shall not operate as a waiver of City's right to enforce any other provision of this Contract.

33. SEVERABILITY. If any term or provision, or portions thereof, of this Contract is declared by an arbiter or a court of competent jurisdiction to be illegal, invalid, void, or otherwise unenforceable, each such term or provision shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable; all other provisions and requirements of this Contract shall remain in full force and effect insofar as possible to preserve the lawful anticipated benefits of this Contract to the parties.

Certification

The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury: (a) the number shown on this form is Contractor's correct taxpayer identification; (b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (c) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws; (d) Contractor is an independent Contractor as defined in ORS 670.600; and (e) the Contractor data set forth herein is true and accurate.

The parties, by their signature below, acknowledge having read and understood the Contract and agree to be bound by its terms and conditions.

AGREED TO BY THE PARTIES HERETO:

CITY OF BEAVERTON, OREGON

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

APPROVED AS TO LEGAL SUFFICIENCY: _____

City Attorney

☐ Federal Tax ID#: ____ - ____ - ____; or ☐ SSN: ____ - ____ - ____

This payment information must be provided for Contract approval. This information will be reported to the Internal Revenue Service (IRS) under the name and taxpayer identification submitted. (See IRS 1099 for more information.) Information not matching IRS records could subject Contractor to backup withholding.

APPENDIX “E”

City’s Comprehensive Annual Financial Report FY 2004-05

A copy of the City’s Comprehensive Annual Financial Report for FY 2004-05 may be viewed at http://www.beavertonoregon.gov/departments/finance/finance_reports.html or you may request a hardcopy by contacting Terry Muralt at 503-526-2229, email: tmuralt@ci.beaverton.or.us.